

The Office accepted that on June 6, 1984 appellant, then a 28-year-old clerk, sustained a lumbar strain when he reached for a tray of mail. The Office also accepted a June 27, 1996 occupational injury resulting in a cervical strain and a chronic lumbar strain while handling containers of mail. Appellant worked intermittent periods of light duty and received appropriate

compensation for work absences. He was placed on permanent limited duty as of March 10, 1990. Beginning in 1994, appellant reduced his schedule to working four hours a day light duty. After taking personal leave beginning in August 2002, he returned to light-duty work approximately on February 4, 2003. Appellant stopped work on February 22, 2003¹ and separated from federal service on December 3, 2003, electing disability retirement.

Appellant submitted medical evidence. He was first followed by Dr. Pedro F. Bajo, an attending orthopedic surgeon. In reports from August 1984 to November 1990, Dr. Bajo diagnosed lumbar pain from a bulging L4-5 disc caused by the June 6, 1984 injury. The Office obtained an October 24, 1986 second opinion report from Dr. John C. Baker, a Board-certified orthopedic surgeon, who opined that appellant had a chronic lumbar strain due to the accepted injury superimposed on preexisting degenerative disc disease. On December 3, 1990 appellant underwent a C6-7 discectomy and fusion for nonoccupational cervical spondylosis.

Dr. Robert Martinez, an attending Board-certified neurologist, submitted periodic reports from October 30, 1990 to November 2001, noting a history of injury and treatment. He observed lumbar pain and limited motion with nodular paraspinal spasm.² In reports beginning in July 1996, Dr. Martinez noted increasing neck pain. He diagnosed degenerative disc disease of the cervical and lumbar spine. Dr. Martinez attributed appellant's cervical condition to the 1990 discectomy and fusion.³

The Office obtained a second opinion⁴ on December 22, 2001 from Dr. Laurie Barclay, a Board-certified neurologist, who opined that appellant had chronic cervical and lumbar strains causally related to accepted injuries. Dr. Barclay obtained nerve conduction velocity and somatosensory evoked potential studies showing possible bilateral carpal tunnel syndrome, neuropathy or radiculopathy and possible lumbar radiculopathy.

¹ By decisions dated August 15, 2003 and January 26, 2004, the Office denied appellant's claim for a recurrence of disability from February 28 to May 2, 2003. The Office found that appellant attributed the recurrence of disability to new work factors in February 2003. The Office further found that appellant's physician provided insufficient rationale supporting a causal relationship between the herniated L2-3 disc and the accepted injuries.

² A July 28, 1993 lumbar magnetic resonance imaging (MRI) scan showed no herniated disc or central canal stenosis.

³ On November 20, 2000 the Office obtained a second opinion from Dr. Rosario Musella, a Board-certified neurosurgeon, who opined that appellant's neck condition was not work related.

⁴ The record indicates that the Office initially intended that Dr. Barclay serve as an impartial medical examiner. The Office later stated that Dr. Barclay was a second opinion physician as there was no conflict of medical opinion.

In reports from December 2001 to November 2004,⁵ Dr. Martinez diagnosed “chronic cervical, thoracic and lumbosacral strain with preexisting degenerative arthritis and bulging disc” at L2-3. He opined that appellant’s cervical condition was both work related and preexisting. Dr. Martinez noted that appellant was under treatment for depression due to pain.

In June 2004, the Office referred appellant, the medical record and a statement of accepted facts to Dr. John M. Leavengood, a Board-certified neurologist, for a second opinion examination.⁶ Dr. Leavengood submitted a July 8, 2004 report reviewing the medical record and statement of accepted facts. On examination, he found slightly diminished vibration sensation in the toes. Sensory, motor and reflex results of all extremities were otherwise normal. Dr. Leavengood noted that the paraspinal spasm and nodularity described by Dr. Martinez were not present on examination. He disagreed with the neurodiagnostic interpretations of Dr. Barclay and Dr. Martinez, as objective clinical findings did not support the presence of nerve root compression or a polyneuropathy. Dr. Leavengood opined that there were no ongoing conditions related to the accepted cervical and lumbar strains. He diagnosed left-sided neck and low back pain. Dr. Leavengood opined that appellant could work full time with restrictions attributable to nonoccupational conditions.

In a July 20, 2004 report, Dr. Martinez diagnosed a chronic herniated disc at L2-3, arthritis of the cervical and lumbar spine, chronic cervical, thoracic and lumbosacral strains and chronic pain syndrome.

By notice dated September 13, 2004, the Office advised appellant that it proposed to terminate his compensation on the grounds that the work-related disabilities had ceased, based on Dr. Leavengood’s opinion.

In a November 8, 2004 letter, appellant contended that Dr. Leavengood’s opinion was flawed and could not represent the weight of the medical evidence. He submitted an October 14, 2004 report from Dr. Martinez, noting Dr. Leavengood’s report and reiterating previous diagnoses.

By decision dated February 4, 2005, the Office terminated appellant’s monetary and medical compensation benefits effective February 7, 2005 on the grounds that the accepted conditions ceased without residuals. The Office accorded the weight of the medical evidence to

⁵ On July 2, 2002 appellant underwent cervical epidural injections to treat degenerative cervical disc disease. March 7, 2003 MRI scan of the cervical and lumbar spine showed mild disc bulging from C7-T3, osteophytes at C4-5, status post fusion at C5-6 and C6-7 with narrowing of the neural foramina on the left, a straightened lumbar lordosis and a left-sided herniation at L2-3. A June 24, 2003 myelogram and computed tomography scan showed degeneration and instability at C3-4 and C4-5 at the previously operated levels. From August 2003 to December 2004, appellant was followed for pain management by Dr. Manjul D. Derasari, an attending Board-certified anesthesiologist, who prescribed narcotic medications and in April 2004 administered cervical facet block injections.

⁶ In a May 28, 2004 memorandum and June 9, 2004 letter, the Office characterized Dr. Leavengood as a referee examiner but did not note a conflict of medical evidence. In an October 8, 2004 file memorandum, the Office stated that Dr. Leavengood was a second opinion examiner as there was no conflict of medical opinion.

Dr. Leavengood, who submitted a well-rationalized report explaining that the work-related cervical and lumbar strains had ceased without residuals.

Appellant requested an oral hearing, held on February 23, 2006. At the hearing, he asserted a conflict of medical opinion between Dr. Leavengood and Dr. Martinez. Appellant submitted a February 22, 2006 memorandum acknowledging that his herniated cervical disc was not work related. He submitted additional medical evidence.

In reports dated from January 20, 2005 to February 1, 2006, Dr. Martinez opined that appellant remained totally and permanently disabled due to the accepted injuries. He noted an antalgic gait, a positive straight leg raising test, limited cervical and lumbar flexion, tenderness, swelling and nodular spasms throughout the paraspinal musculature. Dr. Martinez diagnosed a chronic herniated disc at L2-3, arthritis of the cervical and lumbar spine, chronic, severe cervical, thoracic and lumbosacral strains and chronic pain syndrome.

By decision dated and finalized May 8, 2006, an Office hearing representative affirmed the February 4, 2005 decision, finding that Dr. Leavengood's opinion continued to carry the weight of the medical evidence. The hearing representative found that Dr. Martinez provided insufficient rationale supporting a causal relationship between the accepted injuries and appellant's condition on and after February 7, 2005.

In a December 21, 2006 letter, appellant requested reconsideration. He submitted additional reports from Dr. Martinez. In a May 1, 2006 report, Dr. Martinez reiterated previous diagnoses. In a November 15, 2006 report, he noted appellant's complaints of neck pain into the left arm and thoracic and lumbar pain radiating into the left thigh. Dr. Martinez opined that appellant had residuals of the accepted injuries demonstrable on electrodiagnostic studies. He stated that the cervical and lumbar strains were "causally related to the June 6, 1984 lumbar strain and the June 27, 1996 cervical strain." Dr. Martinez found appellant totally and permanently disabled as a result of the accepted injuries.

By decision dated March 15, 2007, the Office denied modification on the grounds that the evidence submitted was insufficient. The Office found that Dr. Martinez's reports were flawed and insufficiently rationalized. They were therefore of insufficient weight to create a conflict with Dr. Leavengood's opinion.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁷ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁸

⁷ *Bernadine P. Taylor*, 54 ECAB 342 (2003).

⁸ *Id.*

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁹ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.¹⁰

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained cervical and lumbar strains. He was first followed by Dr. Bajo, an orthopedic surgeon, who diagnosed a bulging L4-5 disc beginning in 1984. Dr. Baker, a Board-certified orthopedic surgeon and second opinion physician, diagnosed preexisting degenerative disc disease on October 24, 1986. In December 1990, appellant underwent a C6-7 discectomy and fusion due to nonoccupational spondylosis. He was then followed by Dr. Martinez, an attending Board-certified neurologist. In reports from October 30, 1990 to December 2004, Dr. Martinez observed lumbar pain, increasing neck pain and nodular paraspinal muscle spasms. He diagnosed preexisting degenerative arthritis of the cervical and lumbar spine, a herniated L2-3 disc, chronic cervical, thoracic and lumbosacral strains and depression. Dr. Martinez attributed appellant's cervical condition to the 1990 discectomy and fusion.

The Office referred appellant to Dr. Leavengood, a Board-certified neurologist, for a second opinion examination. Dr. Leavengood submitted a July 8, 2004 report explaining that appellant no longer exhibited any signs of the accepted cervical and lumbar strains. He noted that he did not find objective evidence of the paraspinal spasms and neurologic abnormalities observed by Dr. Martinez and Dr. Barclay, the second opinion neurologist. Dr. Leavengood noted work restrictions due to preexisting, nonoccupational degenerative disc disease and postsurgical status.

Based on this report, the Office issued a notice of proposed termination on September 13, 2004. In response, appellant submitted an October 14, 2004 report from Dr. Martinez reiterating previous diagnoses. The Office then terminated appellant's compensation by decision dated February 4, 2005 on the grounds that the medical evidence established that the accepted injuries had resolved without residuals.

The Board finds that Dr. Leavengood's report is sufficient to represent the weight of the medical evidence. It is detailed, well-rationalized and based on a complete factual and medical history.¹¹ Dr. Leavengood thoroughly reviewed the medical record and statement of accepted facts. He provided detailed rationale explaining that appellant's symptoms were not occupationally related. Dr. Leavengood emphasized that appellant no longer had any work-related residuals and that therefore the accepted condition no longer disabled him for work. He provided sufficient rationale, based on a complete and accurate medical history, to establish that

⁹ *Roger G. Payne*, 55 ECAB 535 (2004).

¹⁰ *Pamela K. Guesford*, 53 ECAB 726 (2002).

¹¹ *James R. Taylor*, 56 ECAB 537 (2005).

the accepted cervical and lumbar strains and resolved. Thus, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.¹² For conditions not accepted by the Office as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation.¹³ The fact that a condition's etiology is unknown or obscure neither relieves appellant of the burden of establishing a causal relationship by the weight of the medical evidence, nor shifts the burden of proof of the Office to disprove an employment relationship.¹⁴

ANALYSIS -- ISSUE 2

Following the Office's February 2, 2005 decision terminating his compensation benefits, appellant submitted additional medical reports from Dr. Martinez dated from January 20, 2005 to November 15, 2006. He contended that these reports established continuing residuals of the accepted injuries on and after February 7, 2005.

Dr. Martinez diagnosed a herniated L2-3 disc, arthritis of the cervical and lumbar spine and chronic cervical, thoracic and lumbar strains. Regarding causal relationship, he opined that appellant's cervical and lumbar strains were "causally related to the June 6, 1984 lumbar strain and the June 27, 1996 cervical strain." However, Dr. Martinez did not provide a medical explanation of the pathophysiologic relationship between the accepted cervical and lumbar strains and the conditions observed on and after February 7, 2005.¹⁵ The Board notes that Dr. Martinez did not explain if the December 3, 1990 C6-7 discectomy and fusion for nonoccupational cervical spondylosis continued to affect appellant's condition. Also, he diagnosed a herniated lumbar disc and spinal arthritis, conditions that the Office did not accept. Dr. Martinez did not provide sufficient rationale supporting a medical causal relationship between these conditions and work factors.¹⁶ Therefore, the additional reports are insufficiently rationalized to outweigh Dr. Leavengood's opinion or create a conflict of medical opinion.

Thus, the Board finds that appellant submitted insufficient rationalized medical evidence to establish a causal relationship between his condition on and after February 7, 2005 and the accepted cervical and lumbar strains. Therefore, he has failed to meet his burden of proof.

¹² See *Virginia Davis-Banks*, 44 ECAB 389 (1993); see also *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

¹³ *Alice J. Tysinger*, 51 ECAB 638 (2000).

¹⁴ *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

¹⁵ *Mary E. Marshall*, 56 ECAB 420 (2005).

¹⁶ *Alice J. Tysinger*, *supra* note 13.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits on the grounds that the accepted cervical and lumbar sprains ceased without residuals. The Board further finds that appellant did not meet his burden of proof in establishing a continuing work-related disability on and after the termination of his compensation benefits on February 7, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 15, 2007 is affirmed.

Issued: May 13, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board